

REMARKS/ARGUMENTS

Applicant would like to thank the Examiner for the careful consideration given the present application. The application has been carefully reviewed in light of the Office action, and the following remarks are presented for the Examiner's consideration.

Claims 1-2 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting over claims 1-2 of copending Application No. 10/825,499 ("the '499 application"). Applicant respectfully traverses the rejection for the following reason.

The instant application is a divisional application resulting from a restriction requirement made in Application No. 09/844,306 ("the '306 application") (issued as U.S. Patent No. 6,804,523, on October 12, 2004). Likewise, the copending '499 application is a divisional application resulting from a restriction requirement made in the '306 application. Thus, pursuant to 35 U.S.C. 121, the '499 application cannot be used as a reference against the instant application.

Specifically, 35 U.S.C. 121 prohibits the use of a patent issuing on an application with respect to which a requirement for restriction has been made, or on an application filed as a result of such a requirement, as a reference against any divisional application, if the divisional application is filed before the issuance of the patent (MPEP § 804.01). Therefore, since the '499 application is a divisional application filed as a result of the restriction requirement made in the '306 application, the '499 application cannot be used as a reference against the instant application, which is a divisional application of the '306 application.

For the above reasons, Applicant hereby requests that the rejection be withdrawn and the claims reconsidered.

In light of the foregoing, it is respectfully submitted that the present application is in a condition for allowance and notice to that effect is hereby requested. If it is determined that the

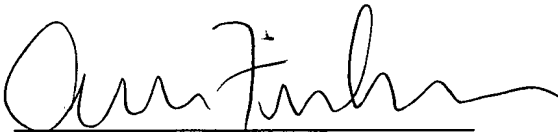
Appl. No. 10/826,118
Preliminary Amdt. Dated June 13, 2005
Reply to Office action of March 11, 2005

application is not in a condition for allowance, the Examiner is invited to initiate a telephone interview with the undersigned attorney to expedite prosecution of the present application.

If there are any additional fees resulting from this communication, please charge same to our Deposit Account No. 16-0820, our Order No. 33549US2.

Respectfully submitted,

PEARNE & GORDON LLP

By: 
Aaron A. Fishman, Reg. No. 44682

1801 East 9th Street
Suite 1200
Cleveland, Ohio 44114-3108
(216) 579-1700

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